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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 2255 OF 2006

Maharashjtra Rajya Mathadi Transport
and General Kamgar Union,
Jivraj Bhanji Shah Market, Third Floor,
Near Masjid Railway Station,
Mumbai 400 009. ... Petitioner

Versus

1. The Bombay Iron and Steel Labour Board, constituted under the Maharashtra Mathadi, Hamal an Other Manual Workers (Regulation of Employment and Welfare) Act, 1969, through its Secretary having office at Kalamboli, Taluka Panvel, District Raigad.

2. The Railway Goods Clearing and Forwarding Establishments Labour Board for Greater Bombay, constituted under the Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969, through its Secretary having office at 84-A, Broach Sadan, Devji Ratanshi Road, Dana Bunder, Mumbai 400 009.

3. State of Maharashtra ... Respondents

Mr.M.S. Topkar for Petitioner.

Ms. Lata Desai i/by Pallavi Divekar for R. No. 1.

Mr. Avinash K. Jalistagi for R. No. 2.

WITH
WRIT PETITION NO. 6902 OF 2006

Suresh Gosavi Pardhi,
Age Adult 51 residing at
Katkar Pada, Post Boisar,
Taluka Palghar, Dist. Thane
Mukadam (Group Leader
Pool No. 189 registered with
Rly Board) .. Petitioner

Versus

1. State of Maharashtra,
through Secretary, Minister of
Industry Energy and Labour,

Mantralaya, Mumbai.

2. Joint Commissioner, Labour,
Labour Comm. Officer,
Commerce Centre,7th Floor,
Tardeo, Mumbai.

3. Bombay Iron and Steel Labour
Board through it's Secretary
having his office at Kalamboli,
Taluka Panvel, Dist. Raigad.

4. The Railway Goods clearing and
Forwarding Establishment
Labour Board for Greater Bombay
through its Secretary having his
office at 84-A, Broach Sadan, Devji
Ratanshi Road, Dana Bunder,
Mumbai 400 009.

5. Popat Gulab Mehetre,
Mukadam Pool No. 235,
Adult Workers of Mah. Rajya Mathadi
Transport and General Kamgar Union,
Having its office at Jivraj Bhanji
Shah Market, Third Floor, Near
Masjid Rly. Station,
Mumbai 400 009. ... Respondents

Mr. S.S. Deshmukh for Petitioner.

Ms. Lata Desai i/by Pallavi Divekar for R. No. 3.

Mr. A.K. Jalistagi for R. No. 4.

Mr. M.S. Topkar for R. No. 5.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED: FEBRUARY 15, 2007

ORAL JUDGMENT (Per F.I. Rebello,J.):

. Rule in both the Petitions. Heard forthwith.

. The Petitioners in Writ Petition (L) No. 2255 of 2006 is a trade union representing Mathadi workers in Mumbai, Navi Mumbai and many other Districts in the State of

Maharashtra. It represents registered workers of Mathadi Boards including Respondent Nos. 1 and 2. The Respondent No. 1 and 2 have been constituted pursuant to the provisions of the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969. (hereinafter referred to as "Mathadi Act".) In terms of the schedule to the Mathadi Act, the provisions of the Act are made applicable to the areas of Greater Mumbai, Thane District and areas comprising of Panvel, Karjat talukas of Raigad District. Under the provisions of the Act, the State Government has been pleased to frame the "Railway Goods Clearing and Forwarding Unprotected (Regulation of Employment and Welfare) Scheme 1976 which hereinafter shall be referred to as the scheme of 1976. The State Government also in exercise of its powers has also framed the Bombay Iron and Steel Unprotected Workers (Regulation of Employment and Welfare) Scheme 1970 which hereinafter shall be referred to as the Scheme of 1970. The Petitioners in the present petitions are espousing the cause of the workmen covered by the 1970 scheme. That scheme is followed by Respondent No. 1.

. This petition is filed against the direction issued by the Minister for Labour, State of Maharashtra directing the Respondent No. 1 to register and engage a section of the workers registered with Respondent No. 2 under the 1976 scheme with Respondent No. 1 after getting their

registration cancelled from Respondent No. 2. This decision was taken at the Joint meeting called on 8.2.2006. It was attended by the representatives of the Respondent Nos. 1 and 2 and some other officers as also the General Secretary of the Maharashtra Mathadi and General Kamgar Union and the representatives of the Railway Labour Board, Toli No. 189. It is the case of the Petitioners that they had sought an adjournment. That was not granted. It is pointed out that the demand by workers of Toli No. 189, registered with Respondent No. 2 was arbitrary. Earlier also the workers of Toli No.189 had raised a demand that they be allotted work at Boisar Railway Yard which is being done by members of the Petitioners who comprises toli Nos. 235. It is their contention that the action of the Respondent No. 3 is totally without jurisdiction. It is further set out that the accepted practice before registering more workers in a toli, is to consult the existing members of the toli and thereafter to take decision. The petitioners therefore, prayed that the decision of permitting the registered workers of the Railway Board to be registered with the Iron Board be quashed and set aside.

2. Writ Petition No. 6902 of 2006 is filed by the Group Leader of Pool No. 189 registered with Respondent No. 2. It is his case that on 18.7.1984, their Pool was allotted to M/s. Jindal Iron and Steel Company Limited for the work of loading, unloading, stacking, carrying,

weighing, measuring or such other work including work preparatory or incidental to such operations at Railway Station Boisar. There are presently 57 workers in the Pool. However, the Respondent No. 1 Board allotted that work to Pool bearing No. 235 registered with Respondent No.1 board for carrying out the work described earlier at the factory premises of the said company. The company is doing the work of loading and unloading at the factory premises. Workers of Pool No. 235, however, came to Boisar Railway Yard and started to illegally claim the work allotted to the Pool of the Petitioner.The workers of Pool as their work was being encroached upon by the Pool No. 235, made various representations including to the Joint Commissioner, Labour. The Joint Commissioner, Labour informed them by communication of 4.6.2005 that the work of loading and unloading of Iron and steel must be done by the workers registered with Respondent No. 1 Board and that was mutually decided between the parties. The Petitioners deny that there was any such consensus. In view of that, they approached the Minister for Labour who has directed that some workers of Pool No. 189 be absorbed in Pool No. 235. The order of 8.2.2006 in fact seeks to render some assistance to the workers of Pool No. 189. The Petitioners in the Petition therefore, prayed to quash and set aside the decision of the Joint Labour Commissioner dated 4.6.2005 as also the order dated 8.2.2006. They prayed the respondents board be directed to restore the work to the workers of Pool No.

189 for the work of loading etc. of M/s. Jindal Iron at Boisar Railway Yard.

3. We may now advert to the replies filed in Writ Petition (L) No. 2255 of 2006. On behalf of the Respondent, Mr. Sudhir Gaikawad, Secretary of Respondent No. 1 has filed an affidavit. The Petitioners Union, it is pointed out represents Mathadi Workers of toli No. 191A comprising of 18 registered workers, Toli No. 194 comprising of 16 registered workers and workers of Toli No. 235. It is submitted originally the work of M/s.Jindal Iron and Steel Co. Ltd. upon the registration of the said employer with the Respondent No. 1 Board on 7.10.1985 was allotted to Toli NO. 235. The work of the company decreased and the company was closed down for restructuring from 1989. The company thereafter changed its products from ingots to coil processing but started receiving the raw materials from its clients by trucks. The workers of toli No. 235 who were carrying out the operations in Boisar Railway yard were deprived of work and had no income whatsoever for twelve years till 1999. Toli No. 254 was originally allotted to Sai Galvanizers which closed down in July, 1996. After the closure of the said company, Toli No. 254 had no work till it has allotted to M/s. Jindal Iron and Steel Co. Ltd. in the year 1999. Till 2004, the income of the said two tolis was meagre. After 2004 however, the work of M/s. Jindal Iron and Steel Co. Ltd. increased

steadily and from June, 2005, there was a radical increase in the income earned by the workers of the two tolis. Toli No. 191A and toli No. 194 were originally allotted to Tata S.S. Ltd. In April 2003, the said company was amalgamated with Tata Iron and Steel Limited to form Tata Steel. The said two tolis continued to work in the amalgamated company and were earning steady and substantial income from the said company. There was a dispute between Toli No. 191 and 194 on one side and Toli No. A 1-16 also registered with the Respondent Board regarding the work of Tata Steel. At this point the company i.e. Tata Steel allotted work to one Toli No. 189 registered with Railway Goods Clearing and Forwarding Establishment Labour Board for Greater Bombay. Although the said work did not fall within the jurisdiction of the Railway Board the work was taken over by them. On objection being raised by the workers of 191A and 194, the dispute was settled at the Government level on 8.3.2004 and despite opposition from the registered tolis of the Respondent Board, Toli No. 189 of Railway Board was permitted to execute 10% of the work of Tata Steel by Government Order dated 8.3.2004.

4. At the meeting held on 8.2.2006, it is pointed out, the Chairman of Respondent No. 2 contended that as M/s. Jindal Iron and Steel was registered with the Railway Board and hence, the Mathadi workers of the Railway Board are entitled to carry out the scheduled operations of

loading and unloading in the Railway yard and that the mathadi workers of Iron and Steel Board are entitled to carry out the work in the company premises. It is pointed out that this statement was not correct. It is contended that the handling of Iron and Steel material falls squarely within the jurisdiction of the Bombay Iron and Steel Labour Board and the registered mathadi workers of Iron and Steel Labour Board have been carrying out the scheduled operations of Iron and Steel Material, continuously and at all times till date. The Respondent No. 1, has disputed the correctness of the Minutes recorded on 8.2.2006 at the meeting presided over by the Labour Minister and contended that the Minutes recorded were incorrect.Pursuant to the directions of the Minister, they have received 24 applications of Mathadi workers of Railway Board seeking registration. Twenty workers out of these twenty four workers, were registered with Railway Board on 2001. From this, it is submitted that it is evident that the Railway Board has sufficient and adequate work or it would not have registered these workers. On receiving applications, as per prevalent practice, they sought consent from toli No. 235 for inducting new workers. Toli No. 191A and 194 who are registered with Respondent No. 1 since 1980-82 made an application to Respondent No. 1 Board on 20.4.2006, for amalgamation of their tolis.

. A reply has been filed also on behalf of Respondent

No. 2 Railway Board by Mr. B.N. Bhure, Secretary. It is set out that Jindal Iron and Steel Company is registered with Respondent No. 2 board in respect of the goods coming to and and going from Boisar Railway Yard. The said company is also registered with Respondent No. 1 Board but only for its factory. The Respondent No. 1 Board however, has allotted its workers for doing work related to iron and steel. There are 8 such workers. On the other hand, there are 54 workers in toli No.189 who are locals from nearby area. Proceedings took place before the Minister for Labour and directions were issued. It is set out that on a query raised by the Minister, whether it was possible to register Respondent No. 1 Board, the Chairman of Respondent No.1 did not raise any objection and instead stated that the Respondent No. 1 had no objection to include some workers. The averments of the affiant in the affidavit on behalf of the Respondent No. 1 that the minutes as recorded on 8.2.2006 are not correct, have been denied.

6. From the two petitions, the issues which arise for consideration are :

(1) Whether the registered workers of toli No. 189 can carry on the work of Iron and steel at the Boisar Railway Yard, which work is being carried out by workers registered with Iron and Steel Labour Board.

(2) Whether it was open to the Minister for Labour to have issued any directions to Iron and Steel Labour Board for taking workers from toli No. 189 of Railway Board and register them with their Board and adjust them in toli No. 235.

(3) Whether in action on the part of Iron and Steel Labour Board, in not registering the workers who have applied for registration is legal.

7. Before proceeding to answer the issues, we may refer to the order passed by this court in Writ Petition No. 2232 of 2006 in the case of H.G. Pawar and 2 Ors. Versus Bombay Iron and Steel Board decided on 13.10.2006. That Petition was filed by the Mukadam of toli No. 191A and 194, 235/254. By the application dated 25.4.2006, they had prayed that they may be amalgamated into one toli. Their application was not considered by Respondent No. 1 Board and consequently the petition. By an order, the court had directed the Respondent Board to dispose of the Petitioner's application within four weeks. Subsequent to the order of this court, that application was considered by Respondent No. 1 Board which passed an order dated 10.11.2006 amalgamating the 4 tolis viz. 235/254, 191A and 194 into a new toli which is numbered as 477 with 42 workers.

7. The first issue may now be answered. The object of

the 1970 scheme is to ensure adequate supply and full and proper utilization of unprotected workers employed in iron and steel markets or shops, yards, including railway yards, goods-sheds, factories and other establishments, in connection with loading, unloading, stacking, carrying, weighing, measuring iron and steel or such other work including work preparatory or incidental to such operations for efficient performance of work and generally for making better provision of the terms and conditions of employment of such workers and to make provision for their general welfare. Clause 2(2) of the 1970 Scheme applies to employment of registered workers by registered employers in Iron and Steel Markets or shops, including railway yards of works described about in the areas specified in the scheme. The schedule includes the area where Boisar Railway Yard is situated. The 1976 scheme when notified was established with the object to ensure an adequate supply and full and proper utilization of unprotected workers employed in Railway yards, and goods sheds for establishments other than those owned or controlled by the Railway Authorities etc. in connection with loading, unloading stacking, carrying, weighing, measuring or other work including work preparatory or incidental to such operations by employees who are not employed by Railway Authorities, for efficient performance of work and generally for making better provisions for the terms and conditions of employment of such workers and to make provisions for

their general welfare. Proviso to Clause 2(b) of 1976 scheme, provides that this scheme shall not apply to the employment in connection with loading, unloading, stacking, carrying, weighing, measuring or other work including work preparatory or incidental to such operations in railway yards and goods sheds in Greater Bombay and Thane District to schemes set out therein, which includes the Bombay Iron and Steel unprotected workers (Regulation of Employment and Welfare), Scheme, 1970.

. It is therefore, clear from the 1976 scheme that it will not apply for work, which is covered by another scheme which in the instant case is the Scheme of 1970. Under the Scheme of 1976, the registered workers of Respondent No. 2 can carry on all work except the work in respect of which other schemes have been framed in terms of the proviso to clause 2(2) of the 1976 scheme. There can therefore, be no dispute, nor can the workman of toli No. 189 or for that matter Respondent No. 2 contend that the work of unloading of steel and iron at Boisar of M/s. Jindal can only be done by registered workers of Respondent No. 1. In fact the communication of 4.6.2005 would indicate that a similar dispute had been raised by workers of toli No. 189. A joint meeting was held between Respondent Nos. 1 and 2 Boards by the Jt. Labour Commissioner and after elaborate discussions, it was unanimously decided that no work of Jindal Steel

company can be allotted to toli No. 189 registered with Railway Board. This was communicated by the Joint Labour Commissioner on 4.6.2005. It is therefore, clear, considering the two schemes that the work connected with the loading etc. of iron and steel falls within the jurisdiction of Respondent No. 1 and can only be done by the workers registered with Respondent No. 1. Relief to that extent sought for by the Petitioner in Writ Petition No. 6902 of 2006 cannot be granted as that work under the 1976 scheme could not have been done by the workers registered with Respondent No. 2 Board. The first question answered accordingly.

8. We may now answer the second issue. Under the Mathadi Act, if there be dispute whether any section applies to any class of unprotected workers or employers, on the matter being referred to the State Government, the decision of the State Government on the question, after consulting the advisory committee, constituted under Section 14 shall be final. In other words, it is only if there is dispute about the applicability of the scheme would the State Government have jurisdiction to intervene. The decision has to be taken after consulting the advisory committee constituted under Section 14 of the Mathadi Act. In the instant case, assuming there was dispute and the Minister for labour in the State of Maharashtra could intervene, any decision would be binding if the mandatory requirement of Section 5 of the

Act had been complied with. This has not been done. On the contrary, the Minutes would indicate that the iron work in the yard can only be done by the workers registered with the Iron Board under the scheme of 1970. The Minutes noted that the Minister asked whether there was any objection on the part of Chairman of Respondent No. 1, to club the work at Boisar Railway Yard, keep it with Iron Board and get it done jointly from the workers of Railway Board and Iron Board. It is recorded that the Chairman gave no objection. The correctness of this minutes are disputed in the affidavit filed by Mr. Sudhir Gaikawad on behalf of Respondent No. 1. We need not test the correctness of the Minutes, as admittedly the work had to be done by the workers registered with Respondent No. 1 Board. The exercise of issuing directions as set out in the Minutes of 8.2.2006 would be beyond the powers conferred on Respondent No. 1. The finality to a decision taken by Respondent No. 1 would only apply if there was dispute about the applicability of any Scheme and the State of Maharashtra after consulting the committee constituted under Section 14 of the Act, had given its decision. In our opinion, the Minutes of 8.2.2006 purporting to record certain directions was clearly without authority of law and liable to be quashed and set aside. At the highest, the proceedings of the Minutes can only be understood as an intervention to resolve a dispute raised by one of the Parties and therefore the decision, being not one under

the Act would not be binding. Apart from that the Minister ought to have recognised his limits on intervention in the matter and issuing directions. Once there be an Act and a scheme framed thereunder, Respondent No. 3 State is bound to give effect to the scheme and not allow extraneous considerations, unconnected with the scheme to interfere with the functioning of the Statutory Board and powers conferred on it. Respondent No. 1 can only intervene when there be power and not otherwise. In the instant case, the action of Respondent No. 3 was clearly contrary to the Act and the scheme.

9. We then come to the third issue in the matter of registration of workmen with respondent No.1 Board. The scheme itself provides for the manner in which the workmen have to be registered under Clause 11 a register must be maintained on monthly basis in respect of monthly workers and a pool register of workers other than those on the monthly register. Clause 13 then reads as :

> "13. Fixation of number of workers on the registers : The Board shall determine before the commencement of registration in any category, the numbers of workers required in that category in consultation with the employers. "

Clause 15 deals with the registration of the existing and new workers.

. Clause 15(1)(c) provides that the registration of workers in any new category shall be from among the workers who have been or were working in the said employment on any such date as the Board may specify in this behalf provided, the worker is medically fit and is not more than 60 years of age.

. On a reading of Clauses 15, 16 and 17, it is clear that new workers can be registered, but that must necessarily contemplate that there is sufficiency of work available. There is also provision in special circumstances to employ unregistered workers. In other words, it is the Board that must satisfy itself, that there is sufficiency of work for the existing workers in Pool before new workers are admitted in the Pool. Workers cannot be registered if there be insufficient work or it would result in denial of fair wages to the existing workers registered under the scheme for the full working hours for the day. If only a fair wage can be paid to existing registered workers, can more workers be registered. There can be no apportionment of poverty. The scheme has been framed with the avowed object of efficient performance of work and generally for making better provisions for the terms and conditions of employment of such workers and to make provisions for

their general welfare. The object of the Act and scheme is to ensure that unregistered workers are not exploited and that they get regularity of employment and decent wages. This object would be defeated, if the respondent Boards are called upon to engage workmen and register them with the Board and include them in the Pool, if otherwise, there is no sufficiency of work. The decision of this court of 13.10.2006 has resulted in the existing registered registered workers of other tolis of Respondent No. 1 being amalgamated. Consequently from 8 workmen in the Toli No. 235, there are now 42 workmen constituting new toli No. 477 who are doing the work. In these circumstances, in our opinion, considering the workload and the affidavit filed by Sudhir Gaikawad, more specifically Paragraph No.8, which point out that in the past there are instances where sufficient work load was not available to the registered Mathadi Workers of Respondent No. 1 for long periods, it would not be appropriate to direct to induct more workers in the toli. The other aspect of the matter is that from 24 applications received by Respondent No. 2 Board, 20 were workmen who were registered in 2001. This clearly would indicate that there was sufficient work with Respondent No. 2, as otherwise, those workers could not have been registered with the Respondent No. 2. At any rate, the decision, whether to register more workers and or allot them to existing Tolis, will be a decision solely of the Iron and Steel Board and not of the Respondent

Government.

10. Considering the above, in our opinion, the relief as prayed for by the Petitioners, in Writ Petition (L) No. 2255 of 2006 will have to be granted and consequently the Petition will have to be made absolute in terms of Prayer Clause (a). Consequently Rule discharged in Writ Petition No. 6902 of 2006.

. Both the Parties shall bear their own costs.

(ANOOP V. MOHTA,J.) **(F.I.REBELLO, J.)**